REMARKS/ARGUMENTS

Claims 1-4 and 6-20 are active.

Claim 1 is amended to incorporate Claim 5.

Claim 19 is supported in the specification bridging pages 5-6.

Claim 20 is supported in the specification at Fig. 1 and the underlying description of that stack in the specification (see pages 5-7).

The other changes are to comply with the Examiner's suggestion in the "Claim Objections" noted at page 3 of the Action.

Section headings have been added for the specification as noted on page 2 of the Action.

A new Declaration from the inventors (see the discussion bridging page 2-3 of the Office Action) is submitted with this response.

The rejection of Claims 1, 5, 11, 15 and 17 as allegedly being indefinite or unclear as to what is defined in those claims is traversed, in part, and addressed by amendment, in part.

Specifically, the Examiner believes that the last phrase in Claim 1 is unclear as to what portion of that device has the percent shrinkage. While Applicants believe it was clear that the polymer film has the percent shrinkages, Claim 1 has been amended to help clarify this relationship.

The rejection pertaining to the "complexity value F" as being unclear is not tenable. This phrase is defined on pages 6-7 of the application.

The rejection to Claim 11 has been addressed by reformatting the phrase so that the relationship to the at least one carrier is made more clear.

The rejection to Claim 15 as the "another functionality" is addressed by amending Claim 15 to state "which further comprises at least one additional electrochromic functionality."

Withdrawal of the rejection is requested.

The claims in this application are to an electrically controllable device composed of at least a carrier having a stack of electrochromically functional layers, at least two electrical layers separated by an electrolyte, an upper and lower current lead and the particular feature that the functional layers are provided with a polymer film having a particular percent shrinkage and/or complexity value F. This film provides certain advantages to the device, for example, as described on page 6 of the application.

In the Official Action, the Examiner has rejected these claims as being obvious in view of US 4,773,741 (Inaba) and US 5,981,076 (Ojeda). The Examiner also separately rejects Claims 12-14 as obvious in view of Inaba and Ojeda with US 7,300,166 to Agrawal.

The Inaba patent describes an electrochromic display device which includes glass substrates (features 10 and 20 in Figure 1), electrode films and electrochromic layer (feature 14 in Figure 1). Inaba also suggest providing an insulating film, for example, features 34 and 36 in Figure 3, which surrounds the electrode body 32, and that can be composed of polyethylene. (See columns 5 and 6 of the Inaba patent).

The Examiner acknowledges on page 5 of the Official Action that Inaba does not specifically disclose a film having the percent shrinkage as defined in Claim 1. It is for this feature the Examiner relies on the Ojeda patent which teaches overlay films being syndiotactic polystyrene having reduced shrinkage (see Example 4 in columns 9-10). The Ojeda patent mentions PET as a film but does so for comparative purposes, i.e., not suitable to provide good dimensional stability. Therefore, contrary to the Examiner's conclusion on

page 5, Ojeda does not teach using a polymer film composed of PET having the percent shrinkage because according to Ojeda the conventional PET film was not suitable. Indeed, Ojeda teaches away from using such PET films.

With respect to Claim 5 (now presented in Claim 1) and the complexity value F, in the Official Action on page 7, first paragraph, the Examiner concedes that neither Ojeda nor Inaba describe this value but simply states that it would have been obvious without specifically addressing the complexity value in F provided in the claim. Under US law claims are given their broadest reasonable interpretation, however, it is an error to disregard an express limitation in the claims (*In re Bond*, 710 F.2d 831, 833 (Fed. Cir. 1990). The specification on pages 6-7 clearly define this value and the Examiner has not addressed this limitation nor provided any reasons why the devices of Ojeda and/or Inaba have this feature or would have been modified to include this feature.

The Office has the initial burden of proof to establish the prima facie obviousness of the subject matter Applicants claim in view of the prior art teaching. *In re Fritch*, 972 F.2d 1260, 1265 (Fed. Cir. 1992); *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988). Absent evidence which supports a rejection of the subject matter Applicants claim for obviousness, the Examiner's conclusion that Applicants' claims are unpatentable under 35 U.S.C. §103(a) must be withdrawn.

As depicted in figure 2 of the specification in light of the specification at the top of the page 7 of the specification, it is apparent that the parameter F can be calculated for a complex windshield. The shape of this substrate takes into account two values of deviation and/or deflection: on one hand: in a fore-and-aft (longitudinal) direction and on the other hand: in a transverse direction. The range of the value F which is given in the claim 5 (now in Claim 1) is specific to this kind of substrate and to due these values, the percentage shrinkage

of the interlayer is between 0.6 and 2.0% in this kind of design of substrate, which incorporates an electrochromic system.

Further, the Examiner's position has no support from a literature citation and therefore the rejection is improper for this reason as well. Obviousness rejections must be based on objective evidence of record. *In re Lee,* 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002) (" 'The factual inquiry whether to combine references must be thorough and searching.'...It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions, and cannot be dispensed with.").

With respect to new Claim 19, the electrochromic active layers are defined which is clearly different from the electrochromic display device in Inaba or the other citations in the rejections.

With respect to new Claim 20, it is clear that the configuration and positioning of the film in the claimed device is different from that in the Inaba patent. As apparent from the figures and the underlying description, the Inaba polymer film surrounds all sides of the electrode body 32 unlike the configuration shown in Figure 1 and that which is defined in Claim 1, where the film is a planar or substantially planar contacting only one surface of the lower conducting layer.

Agrawal is cited to allege that certain features of Claims 12-14 would have been obvious when the teachings of Agrawal are combined with Inaba and Ojeda. Claims 12-14 depend from Claim 1 and therefore incorporate all of the limitations of Claim 1. Agrawal does not remedy the deficiencies of the primary combination of Inaba and Ojeda in that Agrawal does not teach a complexity F value or the polymer film percentage shrinkage as defined in the claims. Agrawal also does not describe the limitations of Claims 19 and 20.

As the combination of Inaba and Ojeda do not teach these limitations when combined with Agrawal, the combination of art cannot and does not teach all of the limitations of the claims.

Withdrawal of both rejections applied under 35 USC 103(a) is requested.

A Notice of Allowance for all pending claims is requested.

Respectfully submitted,

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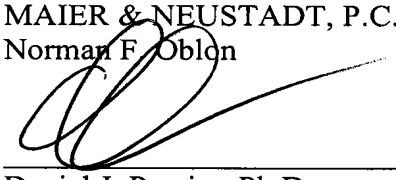

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